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eligibility requirements except the provisions in paragraph (a) of this section relating to organization and principal business shall be deemed to have met these registration eligibility requirements provided that such foreign issuer files the same reports with the Commission under section 13(a) or 15(d) of the Exchange Act as a domestic registrant pursuant to paragraph (c) of this section.

(f) If a registrant is a successor registrant it shall be deemed to have met conditions in paragraphs (a), (b), (c) and (d) of this section if:

(1) Its predecessor and it, taken together, do so, provided that the succession was primarily for the purpose of changing the state of incorporation of the predecessor of forming a holding company and that the assets and liabilities of the successor at the time of succession were substantially the same as those of the predecessor; or

(2) All predecessors met the conditions at the time of succession and the registrant has continued to do so since the succession.

(g) If a registrant is a majority-owned subsidiary which does not itself meet the conditions of the eligibility requirements, it shall nevertheless be deemed to have met such conditions if its parent meets the conditions and if the parent fully guarantees the securities being registered as to principal and interest. Note: In such an instance the parent-guarantor is the issuer of a separate security consisting of the guarantee which must be concurrently registered but may be registered on the same registration statement as are the guaranteed securities.

(h) *Electronic filings.* In addition to satisfying the foregoing conditions of this section, a registrant subject to the electronic filing requirements of Rule 101 of Regulation S-T (§232.101 of this chapter) shall have filed with the Commission:

(1) all required electronic filings, including confirming electronic copies of documents submitted in paper pursuant to a temporary hardship exemption as provided in Rule 201 of Regulation S-T (§232.201 of this chapter); and

(2) all Financial Data Schedules required to be submitted pursuant to Item 601(c) of Regulation S-K

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(§229.601(c) of this chapter) and Item 601(c) of Regulation S-B (§228.601(c) of this chapter).

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EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form S-2, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 239.13 Form S-3, for registration under the Securities Act of 1933 of securities of certain issuers offered pursuant to certain types of transactions.

This form may be used by any registrant which meets the requirements of paragraph (a) of this section (*Registrant Requirements*) for the registration of securities under the Securities Act of 1933 (*Securities Act*) which are offered in any transaction specified in paragraph (b) of this section (*Transaction Requirements*), provided that the requirements applicable to the specified transaction are met. With respect to majority-owned subsidiaries, see paragraph (c) below.

(a) *Registrant requirements.* Registrants must meet the following conditions in order to use this Form for registration under the Securities Act of securities offered in the transactions specified in paragraph (b) of this section:

(1) The registrant is organized under the laws of the United States or any State or Territory or the District of Columbia and has its principal business operations in the United States or its territories.

(2) The registrant has a class of securities registered pursuant to section 12(b) of the Securities Exchange Act of 1934 (*Exchange Act*) or a class of equity securities registered pursuant to section 12(g) of the Exchange Act or is required to file reports pursuant to section 15(d) of the Exchange Act;

(3) The registrant: (i) Has been subject to the requirements of section 12 or 15(d) of the Exchange Act and has filed all the material required to be filed pursuant to sections 13, 14 or 15(d) for a period of at least twelve calendar

months immediately preceding the filing of the registration statement on this Form; and

(ii) Has filed in a timely manner all reports required to be filed during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement and, if the registrant has used (during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement) Rule 12b-25(b) (§240.12b-25(b) of this chapter) under the Exchange Act with respect to a report or a portion of a report, that report or portion thereof has actually been filed within the time period prescribed by the Rule; and

(4) The provisions of paragraphs (a)(2) and (a)(3)(i) of this section do not apply to any registered offerings of investment grade asset-backed securities as defined in paragraph (b)(5) of this section.

(5) Neither the registrant nor any of its consolidated or unconsolidated subsidiaries have, since the end of the last fiscal year for which certified financial statements of the registrant and its consolidated subsidiaries were included in a report filed pursuant to section 13(a) or 15(d) of the Exchange Act: (i) Failed to pay any dividend or sinking fund installment on preferred stock; or (ii) defaulted (A) on any installment or installments on indebtedness for borrowed money, or (B) on any rental on one or more long term leases, which defaults in the aggregate are material to the financial position of the registrant and its consolidated and unconsolidated subsidiaries, taken as a whole.

(6) A foreign issuer, other than a foreign government, which satisfies all of the above provisions of these registrant eligibility requirements except the provisions in paragraph (a)(1) of this section relating to organization and principal business shall be deemed to have met these registrant eligibility requirements provided that such foreign issuer files the same reports with the Commission under section 13(a) or 15(d) of the Exchange Act as a domestic registrant pursuant to paragraph (a)(3) of this section.

(7) If the registrant is a successor registrant, it shall be deemed to have

met conditions in paragraph (a)(1), (2), (3), and (5) of this section if:

(i) its predecessor and it, taken together, do so, provided that the succession was primarily for the purpose of changing the state of incorporation of the predecessor or forming a holding company and that the assets and liabilities of the successor at the time of succession were substantially the same as those of the predecessor; or

(ii) If all predecessors met the conditions at the time of succession and the registrant has continued to do so since the succession.

(8) *Electronic filings.* In addition to satisfying the foregoing conditions, a registrant subject to the electronic filing requirements of Rule 101 of Regulation S-T (§232.101 of this chapter) shall have filed with the Commission:

(i) All required electronic filings, including confirming electronic copies of documents submitted in paper pursuant to a temporary hardship exemption as provided in Rule 201 of Regulation S-T (§232.201 of this chapter); and

(ii) All Financial Data Schedules required to be submitted pursuant to Item 601(c) of Regulation S-K (§229.601(c) of this chapter) and Item 601(c) of Regulation S-B (§228.601(c) of this chapter).

(b) *Transaction requirements.* Security offerings meeting any of the following conditions and made by registrants meeting the Registrant Requirements above may be registered on this Form:

(1) *Primary and secondary offerings by certain registrants.* Securities to be offered for cash by or on behalf of a registrant, or outstanding securities to be offered for cash for the account of any person other than the registrant, including securities acquired by standby underwriters in connection with the call or redemption by the registrant of warrants or a class of convertible securities; *provided* that the aggregate market value of the voting and non-voting common equity held by non-affiliates of the registrant is \$75 million or more.

Instruction: The aggregate market value of the registrant's outstanding voting stock shall be computed by use of the price at which the stock was last sold, or the average of the bid and asked prices of such stock, as of a date within 60 days prior to the date of filing. See the definition of affiliate in Securities Act Rule 405 (§230.405 of this chapter).

(2) *Primary offerings of non-convertible investment grade securities.* Non-convertible securities to be offered for cash by or on behalf of a registrant, provided such securities at the time of sale are investment grade securities, as defined below. A non-convertible security is an investment grade security if, at the time of sale, at least one nationally recognized statistical rating organization (as that term is used in Rule 15c3-1(c)(2)(vi)(F) under the Securities Exchange Act of 1934 (§ 240.15c3-1(c)(2)(vi)(F) of this chapter)) has rated the security in one of its generic rating categories which signifies investment grade; typically, the four highest rating categories (within which there may be sub-categories or gradations indicating relative standing) signify investment grade.

(3) *Transactions involving secondary offerings.* Outstanding securities to be offered for the account of any person other than the issuer, including securities acquired by standby underwriters in connection with the call or redemption by the issuer of warrants or a class of convertible securities, if securities of the same class are listed and registered on a national securities exchange or are quoted on the automated quotation system of a national securities association. In addition, Form S-3 may be used by affiliates to register securities for resale pursuant to the conditions specified in General Instruction C to Form S-8 (§ 239.16b of this chapter).

(4) *Rights offerings, dividend or interest reinvestment plans, and conversions, warrants and options.* (i) Securities to be offered:

(A) Upon the exercise of outstanding rights granted by the issuer of the securities to be offered, if such rights are granted on a *pro rata* basis to all existing security holders of the class of securities to which the rights attach;

(B) Under a dividend or interest reinvestment plan; or

(C) Upon the conversion of outstanding convertible securities or the exercise of outstanding warrants or options issued by the issuer of the securities to be offered, or an affiliate of that issuer.

(ii) However, Form S-3 is available for registering these securities only if

the issuer has sent, within the twelve calendar months immediately before the registration statement is filed, material containing the information required by § 240.14a-3(b) of this chapter under the Exchange Act to:

(A) All record holders of the rights;

(B) All participants in the plans; or

(C) All record holders of the convertible securities, warrants or options, respectively.

(iii) The issuer also must have provided, within the twelve calendar months immediately before the Form S-3 registration statement is filed, the information required by Items 401, 402 and 403 of Regulation S-K (§§ 229.401 through 229.403 of this chapter) to:

(A) Holders of rights exercisable for common stock;

(B) Holders of securities convertible into common stock; and

(C) Participants in plans that may invest in common stock, securities convertible into common stock, or warrants or options exercisable for common stock, respectively.

(5) *Offerings of investment grade asset-backed securities.* Asset-backed securities to be offered for cash, provided the securities are investment grade securities, as defined in paragraph (b)(2) of this section (Primary offerings of non-convertible investment grade securities). For purposes of this Form, the term "asset-backed security" means a security that is primarily serviced by the cashflows of a discrete pool of receivables or other financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period plus any rights or other assets designed to assure the servicing or timely distribution of proceeds to the security holders.

(c) *Majority-owned subsidiaries.* If a registrant is a majority-owned subsidiary, security offerings may be registered on this Form if:

(1) The registrant-subsi-dary itself meets the Registrant Requirements and the applicable Transaction Requirement;

(2) The parent of the registrant-subsi-dary meets the Registrant Requirements and the conditions of Transaction Requirement in paragraph (b)(2) of this section (Primary offerings of

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non-convertible investment grade securities) are met; or

(3) The parent of the registrant-sub-sidiary meets the Registrant Requirements and the applicable Transaction Requirement, and fully and unconditionally guarantees the payment obligations on the securities being registered, and the securities being registered are non-convertible securities. Note: In such an instance, the parent-guarantor is the issuer of a separate security consisting of the guarantee which must be concurrently registered but may be registered on the same registration statement as are the guaranteed securities.

(d) *Rights offerings by foreign private issuers.* A Foreign private issuer meeting eligibility requirements in paragraphs (a)(2), (a)(3) and (a)(4) of this section may use Form S-3 to register securities to be offered upon the exercise of outstanding rights granted by the issuer of the securities to be offered if such rights are granted pro rata to all existing security holders of the class of securities to which the rights attach. In complying with Item 11 of this Form, the registrant shall describe those material changes that have occurred since the end of the latest fiscal year for which certified financial statements were included in the registrant's latest filing on Form 20-F (17 CFR 249.220f). In complying with Item 12 of this Form, the registrant shall incorporate by reference its latest filing on Form 20-F. The registrant also shall:

(1) Furnish with the prospectus (or have furnished previously) to all its shareholders resident in the United States, including those holding under American Depositary Receipts or similar arrangements, a copy of its latest annual report to security holders, if in the English language. Such annual reports or prospectus shall contain the registrant's undertaking to send promptly to any such United States holder, upon written request, a copy of the registrant's latest filing on Form 20-F; or

(2) Furnish with the prospectus a copy of its latest filing on Form 20-F.

(Secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85; secs. 205, 209, 48 Stat. 906, 908; sec. 301, 54 Stat. 857; sec. 8, 68 Stat. 685; sec. 308(a)(2), 90 Stat. 57; secs. 3(b), 12, 13, 14, 15(d), 23(a), 48 Stat. 882, 892, 894, 895, 901; secs. 203(a), 1, 3, 8, 49 Stat. 704, 1375, 1377, 1379; sec. 202, 68 Stat. 686; secs. 4, 5, 6(d), 78 Stat. 569, 570-574; secs. 1, 2, 3, 82 Stat. 454, 455; secs. 28(c), 1, 2, 3, 4, 5, 84 Stat. 1435, 1497; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 10, 89 Stat. 117, 118, 119; sec. 308(b), 90 Stat. 57; sec. 18, 89 Stat. 155; secs. 202, 203, 204, 91 Stat. 1494, 1498-1500; sec. 20(a), 49 Stat. 833; sec. 319, 53 Stat. 1173; sec. 38, 54 Stat. 841; 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 78c(b), 78l, 78m, 78n, 78o(d), 78w(a), 79t(a), 77sss(a), 80a-37)

[47 FR 11453, Mar. 16, 1982, as amended at 56 FR 30055, July 1, 1991; 57 FR 48976, Oct. 29, 1992; 58 FR 14679, Mar. 18, 1993; 58 FR 16771, Mar. 31, 1993; 62 FR 26388, May 14, 1997; 64 FR 11116, Mar. 8, 1999]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form S-3, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 239.14 Form N-2 for closed end management investment companies registered on Form N-8A.

Form N-2 shall be used for registration under the Securities Act of 1933 of securities of all closed end management investment companies registered under the Investment Company Act of 1940 on form N-8A (§ 274.10 of this chapter). This form is also to be used for the registration statement of such companies pursuant to section 8(b) of the Investment Company Act of 1940 (§ 274.11a-1 of this chapter). This form is not applicable for small business investment companies which register pursuant to §§ 239.24 and 274.5 of this chapter.

[43 FR 39554, Sept. 5, 1978]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form N-2, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.